THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.26655 OF 1999

O R D E R

Heard the counsel for the petitioner and Government Pleader for School Education.

2. The writ petition is filed for a direction to the respondents to pay interest on the delayed payment of pensionary benefits at the rate of 18 per cent from 30.11.1995 to 28.3.1997 on full pension and gratuity and from 29.3.1997 to 26.5.1997 on balance of pension and gratuity.

3. The case of the petitioner in the affidavit filed in support of the writ petition is that he joined in service as B.Ed. Assistant which is an aided post in the year 1957 in U.L.C.M. High School, Bhimavaram which is under the management of A.E.L.C., Guntur and after working in different districts retired from service on 31.12.1994. As the pension was not paid, the petitioner filed W.P.No.16611/96 before this court for a direction to the respondents to release the pensionary benefits to the petitioner. This Court granted the interim direction. Pursuant to the same, eighty per cent of the anticipatory pension and gratuity were paid on 15.3.1997 and 28.3.1997 respectively and the writ petition was allowed with a direction to pay the entire pension due and other benefits due by 31.5.1997.

4. It is stated herein that as the petitioner suffered both mentally and physically due to the delayed payment of pension, he got issued a legal notice on 16.6.1997 for payment of interest on the delayed payment. On 8.7.1997 he received reply from 1st respondent – District Educational Officer informing that the matter was informed to the superior authorities and further action will be taken in due course. It is stated that the petitioner entrusted the matter to his Advocate for filing

the writ petition and went to U.S.A. and after return when he enquired, he was informed that the writ petition was not filed and therefore, delay of two years had occurred in filing the present writ petition.

5. The 1st respondent – District Educational Officer filed counter on behalf of all the respondents and stated that the prayer in the writ petition is hit by the principle of constructive *res judicata*. The petitioner retired on attaining the age of superannuation on 31.12.1994 and as the pension proposals submitted by the correspondent of the school wherein the petitioner worked were defective, they were returned pointing out such defects, but the correspondent did not resubmit the proposals and only after receiving full particulars the pension was paid to the petitioner on 26.5.1997 and the same was received by the petitioner without any protest.

6. It is stated that challenging the order in W.P.No.16611/1996 the respondents field writ appeal in W.A.No.1369/1997, which was disposed of at the admission stage by the Division Bench by noting that the delay cannot solely be attributable to the appellants and the costs were reduced. It is stated that the delay is caused because of the non-furnishing of necessary particulars by the correspondent and as such the petitioners is not entitled for any interest. With these averments, the writ petition was sought to be dismissed.

7. The learned counsel for the petitioner submitted that the receiving of pension immediately after retiring from service is a statutory right and the same cannot be delayed when there is no lapse on the part of the petitioner. He stated that as there are no lapses on the part of the petitioner, he is entitled for interest on account of delayed payment of pension. He also relied on the judgment of the Apex Court in ***STATE OF KERALA v. M.PADMANABHAN NAIR***[1].

8. On the other hand, the learned Government Pleader for School Education submitted that there is no lapse on the part of the

respondents and on account of delay in resubmitting the pension proposals by complying the defects pointed out by the authorities, the delay has occurred and after receiving of full information pension and other benefits were released to the petitioner on 26.5.1997 and the same were received by the petitioner without any protest. He stated that as there is no lapse on the part of the respondents, the petitioner is not entitled to interest. Referring to the judgment of the Apex Court relied on by the counsel for the petitioner, he submitted that in the said judgment the Apex Court found that there was lapse on the part of the treasury officer and hence granted interest on the delayed payment of the pension and whereas in the present case there is no lapse on the part of the official respondents and as there was delay from the side of the petitioner through correspondent in submitting pension proposals, thereby delay has occurred and hence the judgment of the Apex court cannot be made applicable to the facts of the present case.

9. From the above it could be seen that the petitioner retired from service on 31.12.1994 and as there was delay in payment of pension he filed writ petition in W.P.No.16611/1996 and the same was allowed on 25.4.1997. In the said writ petition the petitioner did not claim for any interest. The case of the respondents is that as there were defects in pension proposals submitted by the correspondent of the school wherein the petitioner worked, the same was returned for rectification of those defects, but the said proposals were not resubmitted and hence the delay occurred and subsequently after receiving full information the pension was paid to the petitioner on 26.5.1997 and the same was received by the petitioner without any protest. Therefore, the case of the respondents is that the delay is attributable to the correspondent of the school wherein the petitioner worked. Denying the averments made in the counter, the petitioner did not file any reply and further for the best reasons known to him he did not choose to implead the correspondent of the school and on the

other hand the learned counsel for the petitioner tried to justify the case stating that there is no lapse on the part of the petitioner. When the respondents by filing counter have stated that the lapse is on the part of the correspondent of the school, without filing any reply affidavit to the counter, the submission of the counsel for the petitioner cannot be appreciated. Furthermore in the writ appeal filed by the respondents in W.A.No.1369/1997 a Division Bench of this Court while disposing of the same at the admission has taken judicial notice of the fact that the delay is not solely attributable to the respondents and reduced the costs imposed by the learned single Judge. Further as already stated, the petitioner did not seek for any interest in the earlier writ petition, which was allowed in the year 1997 and filing the present writ petition for interest in the year 1999 i.e., after a lapse of two years with vague explanation and without any particulars that he went to U.S.A. by entrusting the job of filing writ petition to his Advocate and that when he returned he was informed that the writ petition was not filed and hence the delay has occurred, cannot be accepted. Hence there are latches on the part of the petitioner. As submitted by the counsel for the respondents, the judgment relied on by the counsel for the petitioner cannot be made applicable to the facts of the present case, as in the said case the delay was on the part of the officials. In the present case, the delay was on the part of the correspondent in furnishing details. As already noted the Division Bench has already taken judicial notice of the fact that the delay cannot solely be attributable to the respondents herein. In these facts and circumstances, I do not find any merit in the writ petition.

10. For the foregoing reasons, the writ petition is dismissed. No costs.

AVS

26..07..2006

[1] AIR 1985 SC 356